

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
RASHAD ALI, MINERVA ALI, MINERVA ALI, as
Guardian over DANYAL ALI, MINERVA ALI, as
Guardian over DANYAH ALI, infant, and MINERVA
ALI, as Guardian over TANYAH ALI, infant,

PLAINTIFF'S STATEMENT
PURSUANT TO LOCAL
RULE 56.1

Civil Action No. 07CV6010

Plaintiffs,

-against-

LECOURIUX G. YANNICK,

Defendant.
-----X

Plaintiffs, Rashad Ali, Minerva Ali, Minerva Ali, as Guardian over Danyal Ali, Minerva Ali, as Guardian over Dayah Ali, infant, and Minerva Ali, as Guardian over Tanyah Ali, infant, by their attorneys Sacks & Sacks, LLP, as and for their Statement pursuant to Local Rule 56.1, sets forth that there is no genuine issue to be tried with respect to the following material facts in this action:

The Parties

1. Plaintiffs, Rashad Ali, Minerva Ali, Danyal Ali, Danyah Ali, and Tanyah Ali, all natural persons who reside at 1255 Ward Avenue, Bronx, New York 10472. (See Complaint attached to the Affirmation of David H. Mayer, Esq. as Exhibit #1).

2. Defendant, Lecouriux G. Yannick is a natural person who resides at 60 Glen Blvd., Glen Rock, New Jersey 07452. (See deposition of Lecouriux G. Yannick annexed to the affirmation of David H. Mayer, Esq. dated July 29 2008 as Exhibit #4).

Jurisdiction and Venue

3. An initial action was commenced on behalf of the plaintiffs, Rashad Ali, Minerva Ali, Minerva Ali, as Guardian over Danyal Ali, Minerva Ali, as Guardian over Dayah Ali, infant, and Minerva Ali, as Guardian over Tanyah Ali, infant, against defendant, Lecouriux G. Yannick in the Supreme Court of the State of New York, County of Bronx, on or about November 13, 2006. (See copy of Summons and Complaint annexed to the affirmation of David H. Mayer, Esq. dated July 28, 2008 as Exhibit #1).

4. On or about June 19, 2007 a notice of removal was filed on behalf of the defendant, Lecourieux G. Yannick by his counsel in this Court to move this matter to this Court based on diversity of the parties being citizens of different states and the matter of controversy being the sum of \$75,000.00. This was done pursuant to the 28 U.S.C. § 1391(a). (See copy of notice of removal annexed to the affirmation of David H. Mayer, Esq. dated July 28, 2008 as Exhibit #2).

5. This Court also has jurisdiction and supplemental jurisdiction over claims of liability and parties to this matter pursuant to 28 U.S.C. § 1391(a) and 28 U.S.C. § 1367(a). (See affirmation of David H. Mayer, Esq. dated July 28, 2008 annexed hereto as Exhibit #4).

The Facts

6. On October 28, 2006 plaintiff, Rashad Ali was the operator of a four door Honda Civic with Co-plaintiffs, Minerva Ali, Danyal Ali, Danyah Ali, and Tanyah Ali, all passengers. (See deposition of plaintiff, Rashad Ali annexed to the affirmation of David H. Mayer, Esq. dated July 28, 2008 as Exhibit #2 at 9-11).

7. Plaintiff, Rashad Ali had turned off the FDR roadway at the exit on 132nd Street at the time of the accident. (See deposition of Rashad Ali annexed to the affirmation of David H. Mayer, Esq. dated July 28, 2008 as Exhibit #2 at 9).

8. Plaintiff, Rashad Ali after turning off the highway was stopped at a yield sign when he was struck by defendant's vehicle from behind. (See deposition of Rashad Ali annexed to the affirmation of David H. Mayer, Esq. dated July 28, 2008 as Exhibit #2 at 16-20).

9. Plaintiff, Rashad Ali's vehicle was at a complete stop at the time that his vehicle was struck by defendant, Lecourieux G. Yannick. (See deposition of Rashad Ali annexed to the affirmation of David H. Mayer, Esq. dated July 28, 2008 as Exhibit #2). (See deposition of Minerva Ali annexed to the affirmation of David H. Mayer, Esq. dated July 28, 2008 as Exhibit #3 at 12).

(See deposition of Lecouriux G. Yannick annexed as Exhibit #4 to the affirmation of David H. Mayer, Esq. dated July 28, 2006).

11. Lecouriux G. Yannick was the operator of a 1997 Jeep Cherokee on the FDR on October 28, 2006. (See deposition of Lecouriux G. Yannick annexed as Exhibit #4 to the affirmation of David H. Mayer, Esq. dated July 28, 2006 at 9-12).

12. Lecouriux G. Yannick exited the highway and there was a yield sign with two vehicles in front of the yield sign. (See deposition of Lecouriux G. Yannick annexed as Exhibit #4 to the affirmation of David H. Mayer, Esq. dated July 28, 2006. Id. at 11-12).


13. Lecouriux G. Yannick's vehicle struck the back of plaintiff, Rashad Ali's vehicle after he exited the highway and before reaching the yield sign. (See deposition of Lecouriux G. Yannick annexed as Exhibit #4 to the affirmation of David H. Mayer, Esq. dated July 28, 2006. Id. at 15).

14. Lecouriux G. Yannick was unable to stop in time and slid into the back of Rashad Ali's vehicle. (See deposition of Lecouriux G. Yannick annexed as Exhibit #4 to the affirmation of David H. Mayer, Esq. dated July 28, 2006. Id. at 15).

15. Plaintiffs, Rashad Ali and Minerva Ali both sustained serious injuries to their spine on the date of the accident. (See deposition of Rashad Ali annexed as Exhibit #3 to the affirmation of David H. Mayer, Esq. dated July 28, 2008); (See deposition of Minerva Ali annexed as Exhibit #3 to the affirmation of David H. Mayer, Esq. dated July 28, 2008).

Dated: New York, New York
July 30, 2008

Yours, etc.,
SACKS AND SACKS, LLP
Attorneys for Plaintiffs

By: 
DAVID H. MAYER, ESQ.
150 Broadway, 4th Floor
New York, New York 10038
(212) 964-5570

TO:

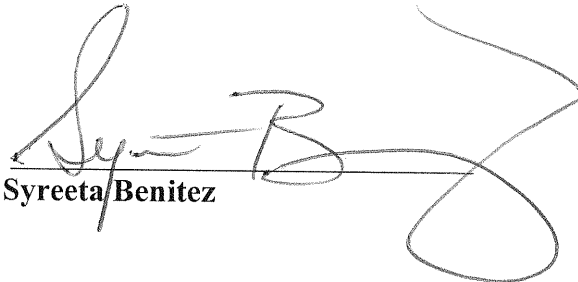
SOL Z. SOKEL, ESQ.
KELLY, RODE & KELLY, LLP
Attorneys for Defendant
300 Old Country Road, Suite 305
Mineola, New York 11501
(516) 739-0400

AFFIDAVIT OF SERVICE

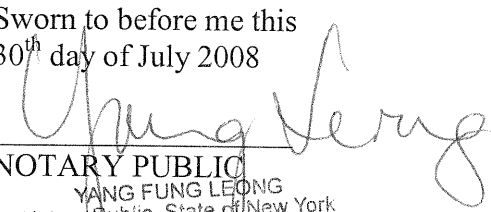
STATE OF NEW YORK)
)ss.:
 COUNTY OF NEW YORK)

Syreeta Benitez, being duly sworn, deposes and says that I am not a party to this action, is over the age of 18 years, and resides in the COUNTY OF KINGS, CITY AND STATE OF NEW YORK, and that on July 30, 2008 served the within, **PLAINTIFF'S STATEMENT PURSUANT TO LOCAL RULE 56.1** and supporting papers on the following attorneys, at the addresses designated by said attorneys for that purpose by depositing a true copy of same enclosed in a postpaid, properly addressed wrapper in an official depository under the exclusive care and custody of the United States Post Office within the State of New York:

SOL Z. SOKEL, ESQ.
 KELLY, RODE & KELLY, LLP
 Attorneys for Defendant
 300 Old Country Road, Suite 305
 Mineola, New York 11501
 (516) 739-0400


 Syreeta Benitez

Sworn to before me this
 30th day of July 2008


 NOTARY PUBLIC

YANG FUNG LEONG
 Notary Public, State of New York
 No. 01LE613666
 Qualified in Kings County
 Commission Expires November 7, 2009